

**Zoning By-Law Committee Public Meeting Minutes**  
**September 22, 2014**  
**7:30 PM**

*Members Present:* Ken Goldstein (Chair), Carla Benka, Mark Zarrillo, Mark Zuroff, Linda Hamlin, Sean Lynn-Jones, Linda Olson Pehlke, Merelice, Paula Friedman

*Staff Present:* Alison Steinfeld, Polly Selkoe, Lara Curtis-Hayes, Jay Rosa, Dan Bennett, Alan Balsam, Lynne Karsten

*Citizens Present:* Brad Moldin, Sloane Furniss, Anne Braudy, Richard Braudy, Victoria Florea, Jim Segel, Gordon Bennett, Dan Saltzman, Eddie Benjamin, Arnon Vered, Leslie Tarr Laurie, Amanda Rositano, Kevin O'Brien, Angela Hyatt, Jennifer Goldsmith, Lucy Goodlark, Mike Lefkowitz, Franklin Hardy, Cindy Greenburg Hardy, Charles H. Osborne, Julia Vien, Elizabeth Childs, David Driscoll, Brian Hochleutner, Regina Frawley, Bobbie Knable, Ruthann Sneider

Committee Chair Ken Goldstein opened the meeting and explained the order of the agenda and the process used to approve a zoning amendment article.

**DISCUSSION OF ART. 12 – REGISTERED MARIJUANA DISPENSARY**

Polly Selkoe explained that current town zoning regulations permit Registered Marijuana Dispensaries (RMD) to locate in General Business zoning districts within the town if they are not located within 500 feet of public and private schools (K-12), nor within structures already containing daycare facilities.

Massachusetts cities and towns are permitted to adopt their own buffer zones (as Brookline has done), or they can use the default language in the Massachusetts regulations, which include additional buffers around parks that contain playgrounds, daycare centers, and places where children congregate.

This citizen petition (Warrant Article XII) proposes to enlarge Brookline's current RMD buffer zones to match those in the state regulations, except that the 500' would be measured from property line to property line, rather than building to building.

Ms. Selkoe then reviewed town maps produced by the Planning Department that indicate town land that is viable for RMD use under these various buffer proposals. The current Brookline RMD buffers produce clear districts where RMDs may locate, including North Brookline along Commonwealth Avenue, Coolidge Corner, Brookline Village, and along Route 9 near the

Newton Border. These viable locations are significantly reduced under proposed new buffer regulations, leaving only a small area of town land along Commonwealth Avenue as a viable location for RMD use. Ms. Selkoe reiterated that state law does not permit communities to prohibit RMDs completely. *[Research subsequent to the meeting showed that under the proposed zoning no sites would be left where RMDs may locate.]*

“Locations where children commonly congregate” was defined as areas where services and/or structured or scheduled events targeted toward young people take place. This includes dance schools, family daycare facilities, and book stores with story hours.

Sean Lynn-Jones questioned if all family daycares (located in homes) were included in these maps, to which, Mrs. Selkoe replied, “yes”

Mark Zuroff then questioned how the location of an existing RMD may impact the permitting for future childcare facilities. It was explained that an existing RMD would be “grandfathered” and the childcare facility seeking a license would do so with the knowledge that the facility is within 500 feet of an existing RMD.

Brookline residents, Gordon Bennett and Mr. Saltzman, then presented the details of their warrant article proposal.

Mr. Bennett clearly stated that enhanced buffer zones around RMDs locating in Brookline effectively reduce the number of viable town areas for these businesses from 7 to 3. This does not prohibit RMDs from locating in the town, and Mr. Bennett argued that these 3 areas are indeed the most appropriate locations for RMDs.

Mr. Bennett reiterated that he does not represent an anti-marijuana stance, but rather wishes to express the critical need to balance the needs of area patients with potential impacts on local children and families. Appropriate town locations proposed by Mr. Bennett include Commonwealth Avenue near Boston University, Route 9 in proximity to Healthworks Fitness, and Harvard Street in proximity to JFK Crossing. These locations naturally arise when using state guidelines for the town and are in commercial areas with parking availability.

Mr. Bennett went on to discuss that very few cities and towns in Massachusetts have reduced less stringent guidelines relating to RMD buffers than the State’s. Brookline, in fact, appears to be an exception to common practices throughout the region. For comparison, Mr. Bennett highlighted that the state of Colorado maintains 1,000 foot buffers between RMD and locations where children congregate.

Mr. Bennett went on to review the details of the 2012 Ballot Question that permitted RMDs in Brookline. He expressed his opinion that the language included in the ballot question was

misleading and that the state has since expanded the language to allow more medical conditions to qualify for treatment with marijuana. Boston's prohibition of RMDs has also created an environment in which Brookline has the potential to become a de-facto regional distribution center. Boston's reluctance to allow RMDs will result in Brookline serving large segments of the metro-Boston population, according to Mr. Bennett.

Mr. Bennett emphasized the potential for a regional-scale operation to emerge in Brookline by sharing estimates that were extrapolated by data indicating that nearly 2% of residents are anticipated to receive licenses for medical marijuana use. Under this assumption, approximately 1,200 Brookline residents are anticipated license holders. This number increases to 14,000 when considering the sizeable neighboring population in Boston that may patronize a potential RMD located in Brookline. This number of patients will result in 35,000 RMD visits per month with monthly sales expected to be around \$6,720,000 (predominately in cash) according to Mr. Bennett.

Mr. Bennett stated that this potential demand places significant stress on local traffic, and enhances the likelihood of crime related to the RMD and diversion of medical marijuana into black market trade. Mr. Bennett also proposed the adoption of a delivery model for distribution as a strategy to alleviate some of these concerns.

Mr. Bennett concluded that the proposed warrant article is not an outright ban of RMDs locating in Brookline, but rather a strategy to mitigate community impact, particularly amongst Brookline's more vulnerable populations. The buffer provisions within this proposed article do not conflict with state guidelines and therefore cannot be considered to be arbitrary and capricious.

Committee member, Mark Zarrillo asked for further description of Mr. Bennett's delivery model and if it would effectively eliminate visits to RDM sites. Mr. Bennett responded that it will certainly reduce patient visits and provide more efficient service for critically ill patients.

Committee member, Sean Lynn-Jones mentioned that the majority of viable land area discussed on Commonwealth Avenue is owned by Boston University, and therefore not viable for RMD use. Mr. Lynn-Jones also worked to develop the current zoning language after committee members agreed on the importance of creating a "middle-ground" for buffer provisions as to avoid excluding all RMD use from the town.

Mr. Lynn-Jones also questioned why the 3 locations proposed by Mr. Bennett are the most ideal when they have the potential to generate significant traffic increases as Mr. Bennett discussed.

Mr. Saltzman agreed that RMD locations in town areas like Route 9 are difficult in terms of traffic congestion, but remain as the only viable town locations to site these facilities.

Committee member, Merelice expressed respect for the citizen petitioners but highlighted the use of biased language like “joint” during Mr. Bennett’s presentation. This language does not reflect the reality of what medical marijuana represents according to Merelice. Merelice shared her opinion that the 2013 ballot question to allow for RMDs is a result of resident compassion for the needs of ill patients.

Merelice went on to support the Brookline Village area as an appropriate site for an RMD location because it currently serves as an extension of the neighboring Longwood Medical Area. Anonymous medical buildings in the area like 1,2 , and 4 Brookline Place are perfect locations to site an RMD because they already house medical service businesses and allow for less immediate medical marijuana patient distinction. The proposed Warrant Article would make it impossible to locate the dispensary at this appropriate location because #5 Brookline Place contains a child care center.

Merelice concluded by stating that child access to medical marijuana is no more prevalent and severe than prescription medication that is available within homes and around pharmacies, so Mr. Bennett did not adequately define the community threats associated with RMD locations.

Committee member, Paula Friedman indicated that she understood the scope and magnitude if a Brookline RMD becomes a de-facto regional distribution center. With this in mind, it is critical to protect vulnerable town populations. Ms. Friedman asked for clarification as to the Board of Selectmen’s authority to impact RMD’s operating schedule.

Polly Selkoe responded that town Selectmen have the authority to license businesses and can control hours of operation through that process.

Committee member Linda Hamlin included that consistency between how the town Planning Department and the citizen petitioners interpret viable land for RMDs based on buffer zones should be consistent. She also questioned the viability of much of this land due to minimal size and building availability.

Mr. Saltzman indicated that litigation concerning the definition of “locations where children congregate” has occurred and that the citizen petitioners are confident with the viable land maps that were presented.

Lara Curtis-Hayes responded that the map Mr. Bennett showed was incorrect because much of the JFK Crossing area is zoned for local business use (L), and currently RMDs are only permitted in general business use (G).

Sean Lynn-Jones questioned how the petitioners associate RMD facilities to injury to children, and if there is an association, how may buffer regulations change that threat? Mr. Lynn-Jones referenced the fact that Colorado has been used as a model in discussion, and questioned if and how regulations there have impacted child safety.

Mr. Bennett responded by stating that empirical evidence has suggested that transmission of medical marijuana into the greater community increases as a result of the presence of RMDs.

Committee member, Carla Benka stated that it is incorrect to assume that this proposed enhancement of RMD buffers will result in blocking RMDs from locating in Brookline.

Ms. Pehlke expressed her opinion that childcare facilities have a high level of supervision, unlike schools for older children, and many of the warrant article points address general concerns that the town realistically has little control over. She went on to point out that Selectman determined conditions for RMD licenses may be reviewed annually and public transit access is a critical RMD siting point that has not been mentioned.

Mr. Bennett expressed his opinion that the area surrounding RMD sites present a higher risk purely by definition. These facilities require significant security measures, large amounts of money and drugs move through the facility, and personal safety is reduced in these areas as a result.

New England Treatment Access (NETA) representative, Jim Segal addressed the committee by highlighting the Kessler Family Foundation's support for NETA's cultivation and research in Brookline, and other portions of Massachusetts. These participants are dedicated to the treatment of patients in Massachusetts. NETA and the Kessler Family Foundation feel that Brookline is a good location for RMD services and have reviewed potential sites on Beacon Street, which did not meet traffic/parking needs, and the vacant Brookline Bank, which adequately fits NETA's facility needs. Mr. Segal indicated that it is not NETA's intent to be a regional provider of medical marijuana and the organization already intends to provide delivery service from its Franklin, MA location.

Mr. Segal confirmed that the Brookline Bank location is their safest/best option and presents minimal threat to area children. Referenced increases in children ingesting medical marijuana products in Colorado are less related to proximity, and more related to child access in homes and enticing packaging. Additionally, Mr. Segal indicated that NETA has worked closely with former Boston Police Chief Ed Davis to assess safety concerns regarding this potential RMD site. Additionally, it is NETA's intent to work closely with the Brookline Board of Selectmen throughout all permitting and licensing processes

Mr. Segal addressed Mr. Bennett's statement that Brookline is an exception in Massachusetts in terms of reducing state buffer guidelines by presenting Newton By-Law language that permits the Board of Alderman to waive all state guidelines when licensing an RMD.

Committee chair, Ken Goldstein questioned if NETA has developed any estimates on patient generated traffic increases. Mr. Segal responded that the demand for medical marijuana is currently an unknown in Massachusetts, but NETA has considered delivery service and patient appointments as a measure to reduce the amount of daily RMD visits.

Committee members, Mark Zarrillo and Linda Olson Pehlke asked NETA representatives to explain their RMD facility's needs in more detail to understand how limited town land, in conjunction with facility requirements, may further limit the feasibility of an RMD in Brookline.

Mr. Segal explained that an RMD would require adequate space (no s.f. estimates provided), live security, adequate parking, access to public transit, and adequate traffic flow. Mr. Segal also explained that a stand-alone building is preferred because such a building can be better secured. Mr. Segal indicated that if these additional RMD buffer zones are adopted, there will effectively be no viable locations for a NETA RMD in Brookline.

The Brookline Bank property meets these structural needs and will be maintained as an historic structure.

#### **Public Comment:**

Brookline resident, Victoria Floria expressed concern that NETA representatives provided no estimates related to traffic and patronage for the committee to base a decision regarding RMD locations.

Medical Marijuana advocate, Steve Saling spoke about how medical marijuana is a viable alternative to common pain reliever medication and anti-depressant medication for patients living with ALS. If RMDs are not supported, then many of these patients are reduced to unsafe access to below medical grade cannabis. The campaign for legal medical marijuana in Massachusetts was passed in 2012, and this proposal undermines that law. RMDs are legitimate businesses that will not corrupt Brookline youth. Mr. Saling concluded by reinforcing the fact that Brookline is a state leader and should place the needs of patients above politics.

Brookline Village resident, Ann Braudy stated that medical marijuana was overwhelmingly approved by the town and this proposed regulation clearly aims to block the establishment of RMDs. This service is critical to patients avoiding the use of illegal or unknown quality marijuana. Mrs. Braudy then stated that Brookline is a beacon for progressive policies and

diversity, but this debate is an example of residents supporting a service as long as it is not in their back yard (NIMBY).

NETA Director, Arnon Vered included the point that finding an amiable landlord in the Brookline area has been challenging, and any Boston University owned properties are not viable because the institution receives federal funding and medical marijuana use remains illegal at the federal level. It is Mr. Vered's opinion that these restrictive buffers provide little additional public benefit above existing buffers. RMD patronage will most likely not reach levels stated by Mr. Bennett, and certainly will not reach those levels immediately upon opening.

Mr. Vered also shared that MA state law has addressed diversion concerns (medical marijuana infusion into the wider community) by attaching a 5 year felony charge to this type of behavior. This punishment is much higher than possession/distribution of the same quantity of marijuana on the black market.

Walnut Street resident, Elizabeth Childs stated that the initial ballot question was adopted with good intentions, but surrounding circumstances have changed since that vote. A Brookline RMD will also permit the purchase of up to 10 ounces per visit, which is much more significant than Colorado, California, and Washington, which permit 2 ounces. Ten ounces is equivalent to \$4,000 worth and adds to concerns regarding crime and diversion, particularly amongst young residents around Walnut and High Streets. Ms. Childs reiterated the fact that this debate is entirely related to a zoning amendment and is not a referendum on the merit medical marijuana itself. The committee, and subsequently the town meeting vote, is tasked with siting appropriate RMD locations rather than considering how conducive the free market is to supporting the type of business.

Elm Street resident, Brian Hochleutner indicated that full RMD license rollout in Massachusetts will only allow for 35 total dispensaries, and never more than 5 per county. This clearly means that few communities will contain an RMD. It was Mr. Hochleutner's opinion that both the Brookline and state buffer guidelines result in minimal opportunity to site RMDs. Perhaps this means that the makeup of the community is not conducive to the establishment of an RMD. Additionally, neighboring Newton has made progress in supporting the establishment of an RMD. Effectively, Brookline area patients will still have access to medical marijuana, even if it is not distributed within Brookline itself.

Beacon Street resident, Eddie Benjamin, stated that there is a clear contrast between the goals outlined in Article 12 and wider community impact. It was Mr. Benjamin's opinion that these buffer zone enhancements will do little to reduce diversion and the amount of area marijuana users. This is a zoning matter, and Article 12 is approaching the discussion as if it is a public health debate.

Ken Goldstein confirmed that the matter of Article 12 will be continued at a later meeting. At that time, NETA will provide traffic and RMD use statistics and discrepancies between town and petitioner maps should be corrected.

**No motion was made related to the zoning amendment.**

### **DISCUSSION OF ART. 13 – NOTICE TO TOWN MEETING AND OTHERS**

Polly Selkoe explained the details of Warrant Article 13, which was brought forth by citizen petition. Article 13 proposes that notice shall be delivered to pertinent Town Meeting Members whenever a Zoning Board of Appeals (ZBA) application is continued, withdrawn, or decided.

Town Meeting Members representing the precinct in which the applicant property is located and Town Meeting Members representing all adjacent precincts would receive this notice under Article 13.

The Article goes on to propose that electronic versions of all ZBA Hearing Minutes and Final Case Decisions should be made available within 21 days of said hearing.

Recently (July, 2014), the town shifted ZBA notification responsibilities from the Town Clerk's office to the Planning and Community Development Department, specifically to a newly developed Zoning Coordinator position.

Current notification procedures give all Town Meeting Members electronic notification of upcoming ZBA agendas. Hard copy versions of these agendas are provided to Town Meeting Members who do not maintain email accounts. Subsequent ZBA Final Case Decision reports are made available on the town website and at the Town Clerk's office. Additionally, specific case Hearing Minutes reflect any case continuances or withdrawals.

Citizen Petitioner, Bobbie Knable discussed how this Warrant Article emerged in response to a 2011 ZBA case that included two continuances with no public notice and no established date certain for reschedule. Supporting meeting minutes were not posted on the website in a timely manner, resulting in a lack of public transparency.

Mrs. Knable recognized that improvements have been made to ZBA hearing public notice procedures, but consistent practices, particularly relating to electronic meeting minutes, must be established so that residents may, "count on a date for public information."

Citizen Petitioner, Ruthann Sneider reiterated the fact that decisions rendered by the ZBA maintain strict time limits for appeal (20 Days). For this reason, it is critical for abutters and



interested parties to receive ZBA case updates in a timely manner. Additionally, case proceedings may be referenced in future litigation relating to said case.

Polly Selkoe responded to citizen petitioner comments by stating that only abutting property owners have standing to appeal ZBA Final Decisions, and that is why only abutters are recipients of hard copy case decision notification.

The Zoning Board of Appeals has also adopted new Rules and Regulations (9/11/14). Under these new regulations, case continuance dates must be stated at public hearings. Case withdrawals, as with all final decisions, are subject to a ZBA vote that is recorded as a Final Decision and posted on the town website.

Building Commissioner, Dan Bennett stated that the ZBA operates with rotating sitting members. This procedure complicates the formal approval of meeting minutes because successive hearings rarely include the same sitting board members. Building and Planning department heads have met with town counsel to determine the most appropriate method to approve and make public ZBA hearing minutes “as soon as practicable.”

Suggestions to post hearing minutes in draft form before approval from the Board that was sitting that night is problematic.

Mr. Bennett also reaffirmed that the Town Clerk still maintains all statutory authority over this process in accordance with M.G.L. c 40A.

Planning Director Alison Steinfeld indicated that her conversations with town counsel have resulted in a proposed policy as follows:

1. The Zoning Coordinator will immediately prepare draft hearing minutes and distribute them via e-mail to the sitting Board members.
2. If:
  - a. None of the sitting members has any suggested changes to the draft minutes, then the Zoning Coordinator will finalize the minutes and have their approval placed on the Agenda of the next regularly scheduled ZBA meeting or hearing. Regardless of who is sitting on the Board at that meeting or hearing, the members may vote to approve the minutes based on the advice of the Zoning Coordinator that none of the sitting members had an issue with the minutes.
  - b. Any member has a suggested change(s) to the draft minutes, then the Zoning Coordinator will have the draft minutes placed on the Agenda of the next regularly scheduled meeting or hearing at which the sitting members are present. Changes to minutes must be discussed in open session. The members will finalize the minutes

and vote to approve them at that time.

3. The Zoning Coordinator will post the approved minutes.

Committee Chair, Ken Goldstein then asked if the notification process outline in Article 13 presents undue burden.

Building and Planning Department Directors responded that M.G.L c 40A notification regulations are currently met. Additional mailing to pertinent Town Meeting Members certainly presents an increase in staff labor, mailing expenses, and notification material sent to Town Meeting Members.

Committee member, Linda Olson Pehlke commented that the burden of reviewing public notification materials is the decision of Town Meeting Members themselves.

Committee Chair, Ken Goldstein, questioned if the citizen petitioners may suggest “no action” on this article based on continuing improvements made to ZBA hearing notification and public record.

Citizen Petitioner, Bobbie Knable indicated that she was open to withdrawal of the article if these new notification practices are actually incorporated moving forward.

Building Commissioner, Dan Bennett concluded a portion of the petitioner’s concerns have been addressed but not all. The big issue of adopted/published hearing minutes needs to be resolved in order to share these public documents “as soon as practicable”

**No motion was made related to this amendment.**

### **DISCUSSION OF SHORT-TERM ROOM RENTAL FOR TRAVELLERS (AIRBNB)**

Ken Goldstein introduced the topic of short-term room rental by stating that resident concern has emerged regarding this practice. Essentially, users can go online to book rooms or apartments in Brookline for short-term periods. This activity is not licensed or registered as a Bed and Breakfast or lodging house.

Mr. Goldstein questioned if the town should suggest that this practice is the sole concern of entities like a condominium association or if it should be regulated through appropriate Zoning By-Law amendment.

Building Commissioner Dan Bennett stated that residents have inquired as to how the Building Department may ban or regulate short-term room rental. These questions are predominately

raised by condominium owners. Mr. Bennett stated that condominium association regulation changes are the fastest method to regulate this activity. Current building and zoning does not permit this activity because it constitutes a change of use (transient).

In Mr. Bennett's opinion, the town has two potential options to address these concerns:

1. By-Law language (particularly Use Regulation 51) can be more direct by stating an outright ban of short-term room rental (Similar to New York City)
2. The town can attempt to capture revenue by licensing this activity

With either of these options, regulation/enforcement is challenging because residents engage in this activity directly over the internet. This activity is currently not permitted but continues to occur because it is a money making opportunity.

Committee member Mark Zarrillo mentioned that the City of Quincy has worked to enforce fines related to lodging units that do not adequately meet building codes.

Again, Mr. Bennett mentioned that this practice is still predominately dependent on complaints in order to identify these short-term rental units.

Assistant Director of Regulatory Planning Polly Selkoe agreed that improvement to Use Regulation 51 in the Town By-law is perhaps the most appropriate method to enhance town regulation of this activity.

Committee member Linda Hamlin expressed interest in a model similar to Quincy. If these units are required to comply with building codes for lodging use this may deter property owners from engaging in short-term room rentals due to the cost associated with retrofitting a residential unit to lodging.

Mrs. Hamlin also expressed concern that the financial draw of short-term room rental may reduce the amount of rental units available in the town.

Committee member, Sean Lynn Jones stated that Articles 12 and 13—the Articles on the Advisory Committee Subcommittee agenda for 10/6 will be discussed further at the Advisory Subcommittee meeting scheduled for 10/6/14 at 7:00pm in Town Hall Room 103.

**The meeting was adjourned with the intent to schedule a follow-up meeting.**